Bath and North East Somerset Council v AJC

Court and Reference: Administrative Court; CO/3384/99

Judge: Sullivan J

Date: 8 December 1999

Appearances: F Morris (instructed by Bobbetts Mackan) for AJC; P John (instructed by the Solicitors, Somerset Council) for the Council.

Judgment:

1. This is a challenge to a number of decisions made by the respondent county council which all stem from a decision by the council to "renew" a guardianship order in respect of the applicant. The respondent has hitherto contended that

2. Its "renewal" of the guardianship order in September 1998 was lawful and that guardianship continues. On the 6 September Mr David Pannick QC sitting as a deputy judge in this division gave permission to apply for judicial review of those decisions.

3. The chronology of the matter is as follows: the applicant is 57 years old and, sadly, he has a history of mental problems. He was admitted to hospital in 1987 diagnosed as having gross cognitive impairment and pre-senile dementia. He was then discharged home. In 1995 he was admitted to Barrow Hospital for assessment under s2 of the Mental Health Act 1983 (the Act). The next month, on 12 September, he was detained for treatment under s3 of the Act. In December of that year he was granted leave of absence on the basis that he reside at New Horizons Hostel; this was under s17 of the Act. In February 1996 the authority for his detention under s3 of the Act expired but he continued to remain at the hostel on a voluntary basis.

4. On 23 September 1996 he was admitted to guardianship under s7 of the Act. In March the next year that initial 6-month guardianship expired and it was renewed for another 6 months under s20 of the Act. In June 1997 the applicant applied to a Mental Health Review Tribunal for a hearing. In September of that year his guardianship was again renewed.

5. The tribunal hearing took place on 10 December 1997. Having heard the application the decision of the tribunal was as follows:

> "The patient shall be discharged from guardianship with effect from Tuesday 3 March 1998."

6. I should indicate that this decision was made on the appropriate form. Paragraph 5 of the form gives the tribunal 2 options: (a) is that the patient shall be discharged from guardianship with effect from - and then the tribunal fills in the date; (b) is that the patient shall not be discharged from guardianship - (b) has been deleted on the form in the present case.

7. Then paragraph 7 requires that the tribunal indicate the legal grounds for its decision, and it says that:

> "The Tribunal is obliged to discharge the patient if the answer to either of the questions is 'YES'."

8-9. Two questions are posed. The answer to the first question was "No"; the answer to the second question, which is:

> "Is the Tribunal satisfied that it is not necessary in the interests of the welfare of the patient or the protection of other persons that the patient should remain under such public guardianship?"

was in the affirmative. So on that basis the tribunal was obliged to discharge the patient.

10. Part 9 of the form then sets out the reasons for the tribunal's decision. In summary, the tribunal was satisfied that the applicant did suffer from a mental illness; accepted that there was some risk to him by discharging the guardianship but felt that there should be an opportunity for rehabilitation and that that opportunity had not been explored for some time. It explained why it deferred the date of discharge in these terms:

> "The tribunal therefore directs the discharge at a future date specifically to enable support services to be put in place and for goal directed rehabilitation to be commenced."

11. On 23 December 1997 a social worker employed by the council who is responsible for the applicant's care wrote to the secretary of the Mental Health Review Tribunal to seek the tribunal's help and advice. That letter said, inter alia, that it was the social worker's view that the tribunal's decision was unlawful and, therefore, invalid. The point made in the letter was that the tribunal did not have power to defer discharge in the circumstances of the present case. The tribunal's only powers were to discharge the guardianship immediately, or to rule that it should continue.

12. Nothing further was done by way of challenge to the tribunal's decision. The tribunal responded to that letter on 30 January 1998, simply saying that it did not consider that it could add anything to the detailed reasons set out in the decision. Following that reply, still no action was taken to challenge the tribunal's decision by way of an application for leave to move for judicial review, instead the council seems simply to have ignored the decision and rather taken it upon itself to treat the decision as being invalid. Certainly on 5 March 1998 the applicant was told by the social worker that "the guardianship stays the same at the moment."

13. So it was that on 11 September 1998 the council purported to "renew" the guardianship beyond the 22 September 1998 when it would - ignoring the question of the tribunal's decision - have otherwise expired. There has subsequently been debate between the parties as to whether or not the guardianship continues. It is plain from the skeleton arguments put in by Ms Morris, on behalf of the applicant, and Mr John, on behalf of the respondent, that there is a dispute between the applicant and the respondent as to whether or not the tribunal had power to defer the date for the applicant's discharge from guardianship.

14. I find it wholly unnecessary to resolve that dispute. The plain fact is that the applicant had applied to the Mental Health Review Tribunal and the tribunal gave its decision on 10 December 1997. The decision is undoubtedly that of the tribunal, it is not some other document which purports to be a decision of a Mental Health Review Tribunal.

15. The decision is now 2 years old. Despite its doubts as to the validity of the decision the council chose not to challenge it by way of making application for judicial review. For understandable reasons the applicant's Form 86A does not seek to have the tribunal's decision quashed, and 2 years after the events is now far too late for the council to apply to have the decision quashed on the basis that it was outside the tribunal's powers. (I observe that the tribunal is not even a party to the these proceedings.)

16. In my judgment it follows that not having been quashed by proceedings which were properly commenced within time, the decision of the tribunal must be treated as being a valid decision. The matter is dealt with in para 5-048 of DeSmith, Woolf and Jowell's Judicial Review of Administrative Action, 5th ed. In summary it states that all official decisions are presumed to be valid until set aside or otherwise held to be invalid by a court of competent jurisdiction. Within the passage which discusses that short summary of the position we find this:

> "Decisions are thus presumed lawful unless and until a court of competent jurisdiction declares them unlawful. There is good reason for this: the public must be entitled to rely upon the validity of official decisions and individuals should not take the law into their own hands."

17. The council no doubt believed that it was acting in the applicant's best interests, but it cannot be right that the council, any more than a private citizen, can arrogate to itself the right to say that a decision of a Mental Health Tribunal is invalid, and thereafter ignore it. The council is no more entitled to do that than an applicant is entitled to ignore the decision of a Mental Health Tribunal and simply seek to walk out

of hospital, or remove himself from a hostel. The position is that either the decision is quashed by a competent court or it is obeyed. It must be obeyed by public authorities just as much as by private citizens.

18. In his skeleton argument, on behalf of the council, Mr John very fairly conceded that if the guardianship did come to an end on 3 March 1998 there was no guardianship which could be renewed by the council and so the purported "renewal" on 11 September 1998 was of no effect whatsoever.

19. Rightly or wrongly, the tribunal discharged the applicant from guardianship with effect from 3 March 1998. The tribunal's decision has not been quashed and that is simply the end of the matter; it is unnecessary to examine the criticisms which were advanced in the skeleton argument of Ms Morris, on behalf of the applicant, of the manner in which the council purported to renew the guardianship. As I have indicated, in the light of the tribunal's decision the question of renewal in September 1998 does not arise.

20. That leads to a practical problem for both of the parties. I have been told by Mr John, on behalf of the council, that it is likely that the council will make a fresh guardianship order when this matter is considered, as it is going to be, on Friday. On behalf of the applicant, Ms Morris contends that it would be unlawful for the council to make a fresh guardianship order because she submits that the criteria for doing that are not met. That issue is raised, to some extent at least, in the context of the purported renewals of guardianship. However, the criteria for renewal are somewhat different from those which relate to the making of a fresh order; whether the differences are significant in any particular case may, of course, be a matter of judgment, but in my view it would be unwise to speculate at this stage. The court should not assume that the council will make a fresh guardianship order. Having been told that the purported renewals of guardianship were of no effect, the council has to consider afresh and with an open mind whether or not it is appropriate to make a guardianship order. It would not be right for this court to prejudge what the council's decision may be.

21. Equally, if the council does consider that it is appropriate to make a fresh guardianship order, it seems sensible that the court should leave a procedural avenue open to enable the parties to bring this issue back to the court with the minimum of cost and delay. What I propose to do to achieve that end is to give a declaration in the terms of this judgment that the applicant was discharged from guardianship as from 3 March 1998 and any purported renewals of guardianship thereafter were of no effect, but to leave over the final aspect of this challenge for further consideration; that aspect of the challenge is whether or not the council is obliged to provide the applicant with community care services which would enable him to live in his own home and leave the hostel.

22. As presently formulated the challenge does not precisely meet the point and, therefore, I give Ms Morris leave to amend the Form 86A, to focus on the point that will be in issue if the council decides to make a fresh guardianship order. As I have indicated the matter is to be considered on Friday by the council and I am quite happy now to consider representations as to a suitable timetable that would enable the parties to bring this matter back before the court with evidence and a Form 86A that is focused upon the issue that is likely to remain between the parties.

[Note: the case was adjourned for the Local Authority to determine whether to make a fresh guardianship application, following which the Claimant could determine whether to amend the claim form to seek to challenge this decision; the Claimant was also given permission to amend the claim form to add a claim for damages for the interference with his life purportedly pursuant to the guardianship order after it had been discharged by the order of the Tribunal.]